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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Darvial


Serial No. 10/675,588

) Art Unit: 3634
)
)
) Our Ref. 44046.103.250.1
)
) Examiner: Purol, Sarah L.

Filed: September 30, 2003

For: RACKING SYSTEMS AND RELATED METHODS

To: Mail Stop Amendment
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

I hereby certify that this correspondence is being:
☒ [X] deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Alexandria, VA 22313-1450
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on this 24th day of October, 2005.
By 
John S. Parzych

RESPONSE TO RESTRICTION REQUIREMENT

This Response is filed in connection with the Office Action mailed September 22, 2005. In the Office Action, Examiner stated that the present application contains patentably distinct inventions and requires restriction between these inventions. The Office Action identifies the following four inventions as being patentably distinct: (I) claims 1-34; (II) claims 35-47, (III) claims 48-56, and (IV) claim 57. By this restriction, Examiner advises Applicants to include an election of the invention to be examined even though the requirement may be traversed (37 CFR 1.143). As such, Applicant, through his attorney, hereby elects claims 1-34, which Examiner has identified as "invention I", with traverse.

Examiner states that Inventions I and II are related as product and process of use. Per MPEP 806.05(h), the inventions are distinct if it can be shown that either: (1) the process for using the product as claimed can be practiced by another materially different product, or (2) the product as claimed can be used in a materially different process of using that product. As such, Examiner asserts that the process for using the product can be practiced with another materially

different product such as use without a panel. Examiner further asserts the same conclusions with respect to Inventions I and III, and Inventions II and IV. Examiner further asserts the same argument as stated above with respect to Inventions III and IV; however, Examiner's conclusions with respect to separate utility for those inventions is that Invention III can be used with a panel.

Examiner states that Inventions I and IV are related as sub-combinations disclosed as usable together in a single combination. The sub-combinations are distinct from each other if they are shown to be separately usable (MPEP 806.05(d)). As such, Examiner asserts that Invention IV has separate utility such as use without tiers. Examiner further asserts the same argument with respect to Inventions II and III; however, Examiner's conclusions with respect to separate utility for those inventions is that Invention III can be used with a panel.

Applicant asserts that the claims of Groups I, II, III, and IV above, which Examiner identified respectively as "Inventions I, II, III, and IV", meet the requirements for consideration in a single application, *inter alia*, in that they each relate to racks for storing a plurality of panels. Further, Applicant traverses the restriction requirement indicating that no serious burden on the Examiner exists. If the search and examination of an entire application can be made without serious burden, it must be examined on the merits even though it includes claims directed to distinct or independent invention. M.P.E.P. § 803. The subject matter of Groups I, II, III, and IV are believed to be sufficiently related that a thorough search for the subject matter of either would encompass a search for the subject matter of all the groups. To avoid duplicative examination by the Patent Office and unnecessary delay and expense to Applicant, Applicant respectfully requests examination on the merits of all the claims, not just those of Group I.

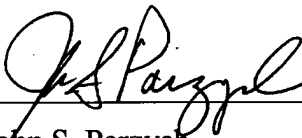
Furthermore, Applicant submits that if a determination of an allowable generic claim is issued, claims that are written in dependant form or otherwise include all the limitations of the allowed generic claim should be considered. M.P.E.P. § 809.02(c). Therefore, Applicant

respectfully requests that the Examiner consider rejoining the claims of Group I and the claims of Groups II, III, and IV upon a finding of allowability of the claims of Group I.

If the Examiner feels that prosecution of the present invention can be advanced by a telephone interview, then the undersigned would welcome a call at the phone number below. The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 061910.

Respectfully submitted,

Dated: 10/24/05


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Please grant any extension of time necessary for entry and charge any fee due to Deposit Account No. 06-1910.

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